

REMARKS:

Upon entry of the foregoing amendment, claims 1-20 are currently pending with claims 1, 14, 16, and 20 being the independent claims. Claim 1 has been amended to more clearly point out and distinctly claim the subject matter. New claim 20 has been added. Descriptive support for the amendment and new claim 20 is found in the specification as filed. The amendment is believed to introduce no new matter, and its entry is respectfully requested.

Claims 1-13 stand rejected under 35 U.S.C. § 112 2nd as being allegedly indefinite. Claims 1-5 and 7-19 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Hurkmans et al. (U.S. Patent No. 3,524,575). Claim 6 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hurkmans et al. (U.S. Patent No. 3,524,575). Applicants respectfully traverse these rejections.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

CLAIMS 1-13 ARE DEFINITE:

Examiner has rejected claims 1-13 under 35 U.S.C. §112 2nd paragraph as being allegedly indefinite. The Examiner states that “reciprocatingly interconnected together” is not clear. In response, Applicant requests that the Examiner reconsider and withdraw the rejection in view of the following.

A simple reading of the application clearly describes and teaches the recitation of “reciprocatingly interconnected together” such that one of ordinary skill in the art would understand claim 1. In paragraph 0018, the specification describes how the “crown-forming part 28 is displaceably connected with the staple former 11 via a first guide arrangement 30 and a second guide arrangement 31, whose directions are indicated by the double arrow D.” As shown in Figure 3, the arrow D indicates a reciprocating motion of up and down and indicates the crown-forming part movement in the direction of the double arrow D. As recited in paragraph 0018, the staple former 11 includes base part 22, “also referred to as the main body portion 22.”

One of ordinary skill in the art, in combination with the ordinary definitions of “reciprocatingly” and “interconnected”, would understand claim 1 in its entirety and would clearly be able to make and use the invention of claim 1 in light of the specification and the figures.

Moreover, as noted by the absence of any 35 U.S.C. §112 2nd rejection in the office actions dated December 1, 2003 and August 6, 2004, the Examiner presumably understood “reciprocatingly interconnected together” and applied that understanding. Therefore, Applicants submit that “reciprocatingly interconnected together” is clearly not indefinite. In view of the above, Applicant requests the reconsideration and withdrawal of the rejection of claims 1-13 under 35 U.S.C. §112 2nd. In combination with the discussion below, Applicants believe that claims 1-13 are now allowable.

CLAIMS 1-5 AND 7-19 ARE PATENTABLE OVER THE REJECTION UNDER 35 U.S.C. § 102:

Examiner has again rejected claims 1-5 and 7-19 under 35 U.S.C. §102(b) as being allegedly anticipated by Hurkmans et al. (3,524,575). In response, Applicant requests that the Examiner reconsider and withdraw the rejection in view of the following.

Initially, in the Examiner’s rejection of claim 1 on page 3, lines 5-6 of the March 8 office action is unclear and the Applicants respectfully request clarification. The Examiner specifically states that “leg-bending portions 94, 95 and the crown-forming portion 96 reciprocates together relative to a driver blade 97.” It is unclear to the Applicants how this statement by the Examiner supports the 102(b) rejection of claim 1. First, claim 1 does **not** include a claim element where the “leg-bending portions 94, 95 and the crown-forming portion 96 *reciprocates together*,” as stated by the Examiner. Specifically, claim 1 recites that “said main body portion and said staple crown-forming portion being *reciprocatingly interconnected*.” To more clearly claim the present invention and more distinctly point out the subject matter of the present invention, claim 1 has been amended to include that “whereby said staple crown-forming portion reciprocates relative to said main body portion.” Second, the Examiner’s use of the “relative to a driver blade 97” in the rejection of claim 1 is also not clear to the Applicants as “driver blade” is never mentioned in claim 1 anywhere.

Additionally, independent claims 1, 14, and 16 and new claim 20 recite elements that Hurkmans et al. fails to teach or even fairly suggest. Upon entry of the above amendment, claim

1 recites that the “said main body portion and said staple crown-forming portion being reciprocatingly interconnected, whereby said staple crown-forming portion reciprocates relative to said main body portion.” Claim 14 recites that the “main body portion, that includes at least one leg-bending portion, interconnected with a staple crown-forming portion by a take-up device configured to permit reciprocation of said staple crown-forming portion relative to said main body portion.” Claim 16 recites that the “crown-forming portion displaceably interconnected by an elastic element to a main body portion including said first leg-bending portion and said second leg-bending portion.” Claim 20 recites that the “said main body portion being connected in a reciprocating manner to said staple crown-forming portion whereby said main body portion and said staple crown-forming portion are in slidable relation.”

Each of the independent claims recites that the crown-forming portion reciprocates, or is displaceable, **relative** to the main body portion. The claims also recite that the main body portion includes at least one leg-bending portion. As such, the crown-forming portion, as recited in the independent claims, also reciprocates, or is displaceable, **relative** to at least one leg-bending portion.

Hurkmans et al. fails to disclose a staple forming device including a crown-forming device which reciprocates or is displaceable **relative** to the main body portion. Further, Hurkmans et al. inherently fails to disclose a crown-forming device which reciprocates, or is displaceable, **relative to at least one leg-bending portion**. This recitation of the independent claims is inherently missing from Hurkmans et al. because the leg-bending portions and the crown-forming are formed from a **single main body portion 90** in Hurkmans et al. Even if the crown-forming portion 96 does reciprocate relative to the main upper arm control member 85 as suggested by the Examiner, Hurkmans et al. still fails to disclose or even fairly suggest that the crown-forming portion 96 reciprocates, or is displaceable, relative to the leg-bending portions 94, 95 as recited in the claims 1, 14, and 16 and in new claim 20.

Not only does Hurkmans et al. fail to disclose the invention as claimed, but Hurkmans et al. in fact teaches directly away from the disclosure of the present invention and the claimed recitations of claims 1, 14, and 16. The Examiner is correct; in Hurkmans et al. the “leg-bending portions 94, 95 and the crown-forming portion 96 reciprocates together.” This is inherently true

because Hurkmans et al. teaches a single element 90, which includes the leg-bending portions *and* the crown-forming portion. However, the independent claims clearly recite that the crown-forming portion reciprocates, or is displaceable, **relative to at least one leg-bending portion**. As such, Hurkmans et al. teaches away from the recitations of the independent claims because the crown-forming portion and the leg-bending portions inherently move as **a single piece at all times**. In other words, Hurkmans et al. teaches absolutely **no relative** movement, reciprocation or otherwise, between the crown-forming portion 96 and the leg-bending portions 94, 95. This teaches directly away from the present invention as claimed.

Despite these above arguments in this and in previous responses, the Examiner has maintained the 102(b) rejection of claims 1, 14, and 16 based on the Examiner's insistence that the main body portion of claims 1, 14, and 16 can be read to cover element 85 of Hurkmans et al. In the office action dated March 8, 2005, the Examiner associates elements in Figure 3 of Hurkmans et al. with claim elements in claims 1, 14, and 16 as follows: crown-forming portion as 96 and the main body portion as 85, 94, 95 including a first leg-bending portion as 94 and a second leg-bending portion as 95. Applicants respectfully submit that the Examiner is incorrect in characterizing element 85 of Hurkmans et al. as the main body portion in claims 1, 14 and 16.

Although, as stated by the Examiner, the claim language is to be given its broadest reasonable interpretation, the Examiner's interpretation of the "main body portion" recitation of the independent claims and element 85 of Hurkmans et al. is not only unsupported by the Applicant's specification but also inconsistent with the clearly defined elements of the specification of the present invention. The Examiner asserts that the main body portion includes the "forwardly projecting portion 85," which is part of "main upper arm control member 25." (Column 5, lines 52-53 of Hurkmans) However, a simple reading of the specification of the instant application indicates that one of skill in the art would not mistake the forwardly projecting portion 85 for the main body portion of the independent claims 1, 14, and 16 as described and disclosed in the specification.

In support of this, the instant specification discloses and provides a "drive device 11, 12, 13" which is the functional equivalent of the forwardly projecting portion 85. As shown in Figures 1, 3-5 and described in the specification, the drive device 12 and the main body portion are described separately and specifically considered for purposes of the present invention to be

distinct elements. If the Applicants had intended for the recitation of the main body portion to include a “drive device 11, 12, 13” in the specification or in the claims, then the Applicants would have included the drive device 12 in the discussion of the main body portion in the specification and in the claims. However, by reading the forwardly projecting portion 85 as a main body portion, the Examiner specifically ignores the claim language and the description of the main body portion, which is neither indefinite or overbroad, to unreasonably broaden the interpretation of the claim despite clear guidance in the specification of the present invention. Without this unreasonably broad interpretation, Applicants respectfully submit that the Examiner would be unable to sustain the rejection of the independent claims in view of the cited art.

Even if the Examiner insists on including element 85 of Hurkmans *et al.* in the characterization of the main body portion, Hurkmans *et al.* still fails to disclose each and every element of the independent claims as required to sustain a 102(b) rejection. Specifically referring to claim 1, the Examiner’s characterization of the main body portions is logically inconsistent because it fails to meet the claim 1 recitation of an “elastic element interconnected between said main body portion and said staple crown-forming portion.”

Assuming that the Examiner’s characterization of the main body portion is correct, the Examiner’s use of the biasing means 86 in the 102(b) rejection is logically flawed. Claim 1 recites, “an elastic element interconnected *between* said main body portion and said staple crown-forming portion.” In the office action dated March 8, 2005, the Examiner states, on page 3, line 1, that the main body portion includes elements 85, 94, and 95. If this is true, then the biasing means 86 of Hurkmans *et al.* should be *between* the crown-forming portion 96 and the main body portion 85 **and** the main body portion 94, 59. However, a close look at Figure 3 of Hurkmans *et al.* clearly shows that the crown-forming portion 96 and main body portion 94, 95 are part of the single element 90. As a single element 90, no elastic element exists *between* the crown-forming portion 96 and main body portion 94, 95, which is clearly inconsistent with claim 1. Therefore, it is unclear to the Applicants how the Examiner characterizes the main body portion as elements 85, 94, 95 to meet the “main body portion, including at least one leg-bending portion” recitation of claim 1, yet ignores the inconsistency created by that characterization when allegedly meeting the “an elastic element interconnected between said main body portion and said staple crown-forming portion” recitation of claim 1.

Claim 1 further recites that “said elastic element biasing said staple crown-forming portion away from said main body portion and permitting said staple crown-forming portion to yield toward said main body portion during staple blank bending.” Again, because the crown-forming portion 96 and main body portion 94, 95 are part of the single element 90, no biasing means exists in Hurkmans et al. to bias between the crown-forming portion 96 *away from* the main body portion 94, 95 as recited in claim 1. As such, the same logical flaw, discussed above, applies here regarding the characterization of the main body portion.

Referring to claim 14, the same logical flaw applies to the Examiner’s characterization of main body portion and the claim 14 recitation, which reads, “said take up device including a biasing means for applying an outwardly directed force between said staple crown-forming portion and said main body portion.” As applied to Hurkmans et al. the biasing means 86 needs to apply an outwardly directed force between the crown-forming portion 96 and the main body portion, which allegedly includes elements 85, 94, and 95. Again, the rejection of claim 14 is logically flawed because the crown-forming portion 96 and main body portion 94, 95 are part of the single element 90 as discussed in detail above and the biasing means 86 is incapable of applying an outwardly directed force between two parts of a single rigid element 90.

Referring to claim 16, the same logical flaw applies to the Examiner’s characterization of main body portion and the claim 16 recitation, which reads, “said crown-forming portion being displaceably interconnected by an elastic element to a main body portion including said first leg-bending portion and said second leg-bending portion.” As applied to Hurkmans et al. the biasing means 86 needs to interconnect the crown-forming portion 96 and the main body portion, which allegedly includes elements 85, 94, and 95. Again, the rejection of claim 16 is logically flawed because the crown-forming portion 96 and main body portion 94, 95 are part of the single element 90, as discussed in detail above, making it impossible for the biasing means 86 to interconnect two different parts (96, 95) that are already part of the single rigid element 90.

Therefore, Hurkmans et al. fails, *inter alia*, to disclose each and every element of the independent claims 1, 14, and 16. In view of the above, Applicants request the reconsideration and withdrawal of claims 1, 14, and 16 under 35 U.S.C. §102(b). Applicants believe that claims 1, 14, 16, are now allowable. For the same reasons as detailed above, Applicants also believe that new claim 20 is now allowable.

Applicants submit that claims 2-5, 7-13, 15, and 17-19 are also now allowable. As dependent claims inherently include all the elements from claims from which they depend, the dependent claims 2-5, 7-13, 15, and 17-19 should also be allowable as being dependent from allowable claims 1, 14, and 16.

CLAIM 6 IS PATENTABLE OVER THE REJECTION UNDER 35 U.S.C. § 103(a):

Claim 6 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Hurkmans et al. (3,524,575). Applicants request that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

Applicants submit that claim 6 is allowable. As dependent claims inherently include all the elements from claims from which they depend, the dependent claim 6 should also be allowable as being dependent from allowable claim 1.

Given the above, Applicant requests that the rejection of claim 6 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

CONCLUSION

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Michael Bell at (202) 383-6500.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,


Michael J. Bell (Reg. No. 39,604)

Date: **April 14, 2005**

HOWREY SIMON ARNOLD & WHITE, LLP
Box No. 34
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2402
(202) 783-0800